IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1736 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASANTIBEN D/O TULSIBHAI GAJERA

Versus

KANTIBHAI PREMJIBHAI PATEL

Appearance:

MR AM DAGLI for Petitioner

MR RC KAKKAD for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/02/2000

ORAL JUDGEMENT

#. The matter has been heard from time to time and the parties have also filed their respective affidavits. The petitioner in this M.C.A. is praying for transfer of Marriage Case No.33 of 1994 from the Court of Civil Judge (S.D.), Jamnagar to the competent court at Rajkot.

#. This Hindu Marriage Petition has been filed by husband-respondent for dissolution of marriage of the parties by a decree of divorce. The petitioner has come up with the case that she is residing at Rajkot with her parents and it is very difficult for her to attend the court on each and every date of the proceedings at Jamnagar which is at a distance of more than 80 kms. from Rajkot. It is allegation of the petitioner against respondent that the latter has deliberately chosen to file divorce petition at Jamnagar to see that she, being a lady, is harassed.

#. It is not in dispute that three cases are pending between the parties at Rajkot, details of which have been given out in the affidavit. The first is Hindu Marriage Petition being No.113 of 1999 for restitution of conjugal rights which is pending in the court of Civil Judge (S.D.), Rajkot. Then there is an application filed by petitioner under Section 24 of the Hindu Marriage Act in that petition and an application under Section 125 of the Criminal Procedure Code being Criminal Misc. Application No.837 of 1999 which is pending before Judicial Magistrate, 1st Class, Rajkot. In addition to this, one criminal complaint has also been filed by petitioner against respondent before the Commissioner of Police, Rajkot for offences punishable u/s.498A and 114 of the Indian Penal Code. Though these all proceedings were initiated by wife after filing of this M.C.A. before this court, but it is undisputed fact that the same are pending at Rajkot. Much capital is sought to be made out from this fact by learned counsel for the respondent but the substance of the matter has to be considered and the fact that when the husband and wife are not on good terms and they are at the stage of war, nothing is wrong in it. Be that as it may, otherwise also, the petitioner being a weaker sex, she may have manifold difficulties, inconvenience in case she is to go to Jamnagar to attend the proceedings of Hindu Marriage Petition filed by respondent for dissolution of marriage by decree of divorce. Then being a lady, it will not only be inconvenient but she may have a feeling of unsafeness to come to the place where the husband is residing. Section 24 of the Civil Procedure Code gives very wide powers to the court for transfer of cases from one District to another. In fact, even no reasons are required to be recorded. It is only the satisfaction of the court on which the orders can be passed. Section 24 of the Code nowhere contemplates or lays down the grounds on which only the court can exercise powers for transfer of cases from one District to another. The court is to see that

one litigant may not be unnecessarily sufferer or inconvenience may not be caused to her merely because the other spouse has chosen to file a petitioner at a place where he is residing. It is not in dispute that this petition, i.e. petition for dissolution of marriage by decree of divorce was also maintainable at Rajkot. In these facts, I find sufficient merits in the contention of the learned counsel for the petitioner that the respondent has deliberately filed this proceeding in the Court at Jamnagar. Be that as it may, when three or four matters against husband are pending at Rajkot, he has to come there to attend those proceedings. If in case this case is transferred to Rajkot also, it may not cause any prejudice, inconvenience or discomfort to him. He can attend fourth or fifth case also.

#. In the result, this M.C.A. is allowed and the Marriage Case No.33 of 1994 pending in the Court of Civil Judge (S.D.), Jamnagar, is ordered to be transferred to District Rajkot. The District Judge, Rajkot, is directed to assign this matter for disposal to the Court competent to try the same. Rule is made absolute in aforesaid terms with no order as to costs.

(S.K.Keshote, J.)

[sunil]